



# California Fair Political Practices Commission

April 6, 1989

George H. Eiser III  
City Attorney  
1243 National City Boulevard  
National City, CA 92050-4397

Re: Your Request for Advice  
Our File No. A-89-168

Dear Mr. Eiser:

This is in response to your letter requesting advice on behalf of the City of National City concerning the mass mailing provisions of the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTION

May the City of National City use public funds to place an advertisement featuring the names and photographs of the city council in a Maytime Band Review program?

## CONCLUSION

A publicly funded advertisement featuring the names and photographs of the city council of National City is permitted in a Maytime Band Review program that is produced and distributed by a nonprofit corporation. While the advertisement is a mass mailing and is produced at public expense, it is not sent within the meaning of the mass mailing provisions of the Act.

## FACTS

Each year the City of National City hosts a high school marching band competition known as the Maytime Band Review. The competition is conducted by a nonprofit corporation called the Maytime Band Review Corporation (the "corporation"). The corporation has full control and authority in producing and putting on

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<sup>1/</sup> Government Code Section 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

the competition, however, the city reviews and approves the parade routes and any use of public facilities.

On December 6, 1988, the city agreed to pay the corporation \$6,750 "to furnish necessary insurance ... and for the City's advertisement in the souvenir program." Private businesses and individuals also purchase advertisements in the program. The total cost of the annual competition is approximately \$30,000.

The city's advertisement will contain the names and photographs of the city council. Beneath the photographs is a listing of the regular meeting locations and times of various city boards and commissions and a listing of frequently called numbers (e.g. fire department, police department, etc.).

The program will be sold to members of the public and participants along the parade route for one dollar each. You anticipate that 3000 programs will be distributed between May 1 and May 6, 1989. All money received from the sale of souvenir programs, over and above the cost of putting on the competition, will be retained by the corporation.

#### ANALYSIS

Section 89001 provides that no newsletter or other mass mailing shall be sent at public expense. A mass mailing is defined in Section 82041.5 as more than two hundred substantially similar pieces of mail. A mass mailing is "sent at public expense" where any of the costs of design, production, printing or distribution is paid for with public moneys (Regulation 18901(a), copy enclosed) and the mass mailing is distributed by one of the following means:

- (1) United States Postal Service;
- (2) Any commercial delivery service;
- (3) Agency personnel or agents of the agency;
- (4) Volunteer delivery mechanisms;
- (5) Paid advertisement in any subscription publication such as a newspaper of general circulation;
- (6) Electronic mail communications.

Regulation 18901(g).

Over 200 copies of your advertisement will be distributed during the review. In addition, the advertisement in the program is being paid for with public money. Thus, the advertisement will be a mass mailing produced at public expense.

However, whether the advertisement will be "sent" within the meaning of Regulation 18901(g) is less clear. Here, the nonprofit corporation that will distribute the advertisement is not a branch of the U.S. Postal Service nor a commercial delivery service.

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Moreover, the program is not a subscription publication nor electronic mail.


In addition, although the corporation receives some public money to put on the review, the corporation is still not a public entity. (Warner Advice Letter, No. I-88-392, copy enclosed.) Nor, will city personnel or agents of the city council be involved in the distribution. Thus, the mass mailing is not sent within the meaning of Regulation 18901(g).

Please note that this outcome would be different if the city expressly funds production and distribution of the program, or the distributor is subject to the direction and control of the city. (Regulation 18901(g)(3).)

If I can be of any further assistance to you, please feel free to contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: John W. Wallace  
Counsel, Legal Division

DMG:JWW:plh

Enclosures



**City of National City  
Office of the City Attorney**

1243 National City Boulevard, National City, CA 92050-4397  
George H. Eiser, III—City Attorney (619) 336-4220

March 16, 1989

John Wallace, Esq., Staff Attorney  
FAIR POLITICAL PRACTICES COMMISSION  
Post Office Box 807  
Sacramento, California 95804

Re: Request for Written Advice

Dear Mr. Wallace:

On behalf of the City of National City, written advice is hereby requested pursuant to Government Code Section 83114(b).

**Factual Background**

In May of each year for the past 12 years, the City of National City has hosted an event known as the Maytime Band Review. The event consists of an invitational competition among dozens of high school and junior high school marching bands, totaling thousands of students, who participate in a parade and related festivities in the City.

The Maytime Band Review fosters a positive image of National City and is actively supported by the City Council of National City. The event is operated by a non-profit corporation known as the Maytime Band Review Corporation. Due to the public relations benefits derived from the event, the City entered into an agreement with the Maytime Band Corporation whereby the City agreed to pay the corporation \$6,750.00. A copy of the agreement is enclosed. These funds are used to defray the costs of the event, and to pay for the City's advertisement in the Maytime Band Review souvenir program. Private businesses and individuals also purchase ads in the program.

The City's ad in the program contains photographs and the names of the Mayor and City Council, lists the location and meeting times of the City's boards and commissions, and lists frequently called telephone numbers in the City government. The program is sold to members of the public for \$1.00. Typically, copies of the program are made available for sale along the parade route, and are sold

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directly to the participating bands as well. It is expected that approximately 3,000 programs will be distributed between May 1 and May 6, 1989. A copy of last year's ad, which is similar to the ad to be placed in the program this year, is enclosed.

**Issue Presented**

Is the City advertisement in the Maytime Band Review souvenir program permissible in view of the "mass mailing" prohibitions of Government Code Section 89001?

Your assistance in this matter is appreciated.

Very truly yours,



GEORGE H. EISER, III  
City Attorney

GHE:dsm

Enclosures

cc: Mayor and City Council  
City Manager

**SENT BY FEDERAL EXPRESS**

# NATIONAL CITY WELCOMES PARTICIPANTS AND VISITORS TO OUR FORTY-FIRST ANNUAL **Maytime Band Review**



**GEORGE WATERS  
MAYOR**



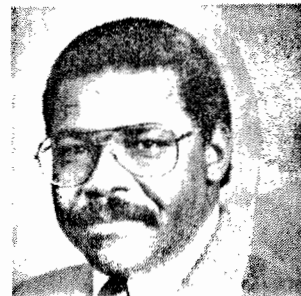
**MICHAEL R. DALLA  
VICE MAYOR**



**MARION COOPER  
COUNCILMAN**



**JESS VAN DEVENTER  
COUNCILMAN**



**FRED PRUITT  
COUNCILMAN**

## CITY COUNCIL, BOARD AND COMMISSION MEETINGS

Name	Meeting Location	Meeting Time
Advisory & Appeals Bd	Civic Center Conf. Rm.	On Call
Citizens Com. for Community Develop.	Civic Center Small Conf. Rm.	2nd Wed. 5:00 p.m.
Pre-City Council Conference	Civic Center, Rm. 200	2nd & 4th Tues. 6:30 p.m.
City Council Meeting	Council Chambers	1st & 3rd Tues. 4:00 p.m.; 2nd & 4th Tues. 7:00 p.m.
Civil Service Commission	Civic Center, Large Conf. Rm.	2nd Thurs., 5:30 p.m.
Library Board of Trustees	Library Conference Room	2nd Wed., 4:00 p.m.
Park & Recreation Adv. Board	Public Works Conf. Rm.	3rd Thurs., 4:00 p.m.
Planning Commission	Council Chambers	1st & 3rd Mon., 7:30 p.m.
Sr. Citizens Adv. Committee	Kimball Park Com. Bldg.	3rd Mon., 10:00 a.m.
Street Tree & Parkway Committee	Public Works Conf. Room	3rd Thurs., 2:00 p.m.
Traffic Safety Committee	Civic Center Small Conf. Rm.	2nd Wed., 1:30 p.m.

## ★ FREQUENTLY CALLED NUMBERS ★

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| <p>1. Fire (Fire &amp; Medical Emergency) ..... 911<br/>            (Business Office) ..... 336-4270</p> <p>2. Police (Emergency) ..... 911<br/>            (Business Office) ..... 336-4320</p> <p>3. Ambulance (Non Emergency) ..... 280-8115</p> <p>4. Poison Information Center ..... 294-6000</p> <p>5. Animal Control Officer ..... 336-4320</p> | <p>6. Humane Society ..... 299-7012</p> <p>7. City Hall (All Offices) ..... 336-4200<br/>            (City Council, City Manager, Clerk, Engineering,<br/>            Finance, Personnel, Public Works, Building &amp;<br/>            Housing, Community Development, Park &amp;<br/>            Recreation, Planning &amp; Purchasing)</p> <p>8. Library ..... 336-4285</p> |
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# California Fair Political Practices Commission

March 22, 1989

George H. Eiser, III  
City Attorney  
1243 National City Boulevard  
National City, CA 92050-4397

Re: Letter No. 89-168

Dear Mr. Eiser:

Your letter requesting advice under the Political Reform Act was received on March 17, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths  
General Counsel

DMG:plh